

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Cynthia Bruce,	)	C/A No.: 3:12-2678-JFA-SVH
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	REPORT AND RECOMMENDATION
Ladies Choice Fitness Center Columbia	)	
Inc.; and Ladies Choice Fitness Center	)	
MI Inc.,	)	
	)	
Defendants.	)	
	)	

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This matter is before the court on the failure of Plaintiff to either file a motion for default judgment or file a motion for voluntary dismissal as to Ladies Choice Fitness Center Columbia Inc. (“LCFCC”). On November 14, 2013, pursuant to the order of the Honorable Joseph F. Anderson, Jr. [Entry #66], the Clerk of Court entered default against LCFCC and Ladies Choice Fitness Center Landmark, Inc. (“LCFCL”) for their failure to defend this action. [Entry #67]. Plaintiff filed a stipulation of dismissal as to LCFCL on December 20, 2013. [Entry #72]. On December 23, 2013, the undersigned issued a text order which stated in pertinent part:

LCFCC is not represented by counsel and default was entered against it on November 14, 2013 [Entry #67]. The deadline for Plaintiff’s counsel to file a motion for default judgment against LCFCC is January 31, 2014. To the extent that Plaintiff intends to dismiss the case against LCFCC, she should file a motion so requesting.

[Entry #75]. Notwithstanding the specific instructions set forth in the court’s order, Plaintiff has failed to file a motion for default judgment or a motion for voluntary dismissal against LCFCC. As such, it appears to the court that she wishes to abandon this

action against LCFCC. Based on the foregoing, the undersigned recommends this action be dismissed against LCFCC with prejudice for failure to prosecute. *See Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b).

Independently, Plaintiff has failed to file a proof of service as to defendant Ladies Choice Fitness Center MI Inc. (“LCFC MI”), despite the passage of more than 120 days since the filing of the complaint in this action. *See* Fed. R. Civ. P. 4(m) (setting 120 day period for service of the summons and complaint). Plaintiff has also failed to comply with Local Civil Rule 4.01, which requires her to give the court and any earlier-served party written notice at the expiration of the 120-day period of the identity and reasons for non-service of any party who has not been served. The court has previously noted Plaintiff’s failure to provide proof of service as to LCFC MI [Entry #64 at n. 1; Entry #66 at n.1], and she has not shown good cause for such failure or otherwise addressed it. Therefore, the undersigned recommends that LCFC MI be dismissed for Plaintiff’s failure to effect service and failure to prosecute.

IT IS SO RECOMMENDED.



February 5, 2014  
Columbia, South Carolina

Shiva V. Hodges  
United States Magistrate Judge

**The parties are directed to note the important information in the attached  
“Notice of Right to File Objections to Report and Recommendation.”**

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).